

# COMPOSITE STATE BOARD OF MEDICAL EXAMINERS



EXECUTIVE DIRECTOR  
LaSharn Hughes

MEDICAL DIRECTOR  
Jim H. McNatt, MD

2 Peachtree Street, N.W., 36<sup>th</sup> Floor • Atlanta, Georgia 30303 • Tel: 404.656.3913 • <http://www.medicalboard.state.ga.us>  
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## COMPOSITE STATE BOARD OF MEDICAL EXAMINERS

### NOTICE OF INTENT TO ADOPT RULES

#### TO ALL INTERESTED PARTIES:

Notice is hereby given by the Composite State Board of Medical Examiners that it intends to amend Chapter 360-3, entitled "Investigations and Discipline," by adopting a new paragraph (21) of rule 360-3-.02, entitled "Unprofessional Conduct Defined. Amended." An exact copy of the proposed amendment is attached to this Notice.

This notice, together with an exact copy of the proposed rule and a synopsis of the proposed rule, is being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice, an exact copy of the proposed rules and a synopsis of the proposed rules may be reviewed during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except official State holidays, at the office of the Composite State Board of Medical Examiners, 2 Peachtree Street, N.W., 36<sup>th</sup> Floor, Atlanta, Georgia 30303.

Any interested person who will be affected by these rules may present his or her comments to the Board no later than April 21, 2005 or make comments at the public hearing. Comments may be directed to Diane Atkinson, Composite State Board of Medical Examiners, 2 Peachtree Street, NW, Atlanta, Georgia 30303-3465 or may be received by the Board by e-mail at [matkinson@dch.state.ga.us](mailto:matkinson@dch.state.ga.us).

A public hearing is scheduled to begin at 9:15 a.m., or immediately following the conclusion of the 9:10 a.m. public hearing, whichever occurs later, on Friday, May 6, 2005 at the Board Room for the Composite State Board of Medical Examiners, 2 Peachtree Street, N.W., 36<sup>th</sup> Floor, Atlanta, Georgia 30303, to provide the public an opportunity to comment upon and provide input into the proposed rules.

The Board voted to adopt this Notice of Intent on November 12, 2004. After the conclusion of the public hearing, the Board may reject, adopt or propose changes with such changes requiring the issuance of another Notice of Intent to Amend and Adopt Rules.

The authority for promulgation of these rules is O. C. G. A. §§ 43-34-24(c), 43-1-25, 43-34-37(a)(7), 43-1-19(a)(6), 43-34-37(a)(9), 43-34-102, 43-34-103, 43-34-108 and the specific statutes cited in the proposed rules.

The Board will consider at its meeting on May 6, 2005, whether the formulation and adoption of this proposed rule amendment imposes excessive regulatory costs on any licensee or entity and whether any cost to comply with the proposed rule amendment could be reduced by a less expensive alternative that accomplishes the objectives of the statutes which are the basis of the proposed rule. Additionally at its meeting on May 6, 2005, the Board will consider whether it is legal or feasible in meeting the objectives of the applicable laws to adopt or implement differing actions for businesses as listed in O.C.G.A. §50-13-4(3)(A)(B)(C)(D).

This Notice is adopted and posted in compliance with O.C. G.A. § 50-13-4 of the Georgia Administrative Procedures Act.

Date: 4/11/05

Signed: LaSharn Hughes with permission by  
LaSharn Hughes  
Executive Director John P. [unclear]  
Composite State Board of Medical Examiners

SYNOPSIS FOR  
AMENDMENT TO CHAPTER 360-3  
INVESTIGATIONS AND DISCIPLINE

RULE SYNOPSIS:

A new paragraph (21) to rule 360-3-.02, entitled "Unprofessional Conduct Defined. Amended:" is hereby proposed for adoption.

Main Features: Proposed paragraph (21) to rule 360-3-.02 provides that it is unprofessional conduct for a physician to be employed by a physician's assistant that the physician supervises.

Purpose: The purpose of proposed amendment 360-3-.02(21) is to avoid a conflict of interest when the physician is employed by a physician's assistant that the physician supervises. Such employment may impair a physician's ability to properly supervise the employer physician's assistant and may result in conduct or practice that is harmful to the public if the employer physician's assistant exerts undue influence in the delegation of medical tasks and provision of health care.

The differences between the existing rule and the proposed amendments to the rule are shown below: (The lined-through text is proposed to be deleted and underlined text is proposed to be added.)

Investigations and Discipline

Chapter 360-3

RULES  
OF  
COMPOSITE STATE BOARD OF MEDICAL EXAMINERS  
  
CHAPTER 360-3  
INVESTIGATIONS AND DISCIPLINE

360-3-.02 Unprofessional Conduct Defined. Amended.

**360-3-.02 Unprofessional Conduct Defined. Amended.**

O.C.G.A. §§ 43-1-19 and 43-34-37 authorize the Board to take disciplinary action against licensees for unprofessional conduct. "Unprofessional conduct" shall include, but not be limited to, the following:

(1) Prescribing controlled substances for a known or suspected habitual drug abuser or other substance abuser in the absence of substantial justification.

(2) Writing prescriptions for controlled substances for personal use or, except for documented emergencies, for immediate family members. For purposes of this rule, "immediate family members" include spouses, children, siblings, and parents.

(3) Prescribing, ordering, dispensing, administering, selling or giving any amphetamine, sympathomimetic amine drug or compound designated as a Schedule II Controlled Substance under O.C.G.A. T. 16, Ch. 13, to or for any person except in the following situations:

(a) Treatment of any of the following conditions:

1. Attention deficit disorder;
2. Drug induced brain dysfunction;
3. Narcolepsy;
4. Epilepsy or;
5. Depression or other psychiatric diagnosis.

(b) For clinical investigations conducted (1) under protocols approved by a state medical institution permitted by the Georgia Department of Human Resources ("DHR") and (2) with human subject review under the guidelines of the United States Department of Health and Human Services.

(4) Pre-signing prescriptions that have the patient's name, type of medication, or quantity blank.

(5) Prescribing controlled substances (O.C.G.A. T. 16, Ch. 13, Art. 2) and/or dangerous drugs (O.C.G.A. T. 16, Ch. 13, Art. 3) for a patient based solely on a consultation via electronic means with the patient, patient's guardian or patient's agent. This shall not prohibit a licensee who is on-call or covering for another licensee from prescribing up to a 72-hour supply of medications for a patient of such other licensee nor shall it prohibit a licensee from prescribing medications when documented emergency circumstances exist.

(6) Providing treatment and/or consultation recommendations via electronic or other means unless the licensee has performed a history and physical examination of the patient adequate to establish differential diagnoses and identify underlying conditions and/or contra- indications to the treatment recommended. This shall not prohibit a licensee who is on call or covering for another licensee from treating and/or consulting a patient of such other licensee.

(7) Failing to maintain appropriate patient records whenever Schedule II, III, IV or V controlled substances are prescribed. Appropriate records, at a minimum, shall contain the following:

(a) The patient's name and address;

(b) The date, drug name, drug quantity, and patient's diagnosis necessitating the Schedule II, III, IV, or V controlled substances prescription; and

(c) Records concerning the patient's history.

(8) Committing any act of sexual intimacy, abuse, misconduct, or exploitation of any individual related to the physician's practice of medicine regardless of consent. The rule shall apply to former patients where the licensee did not terminate in writing the physician-patient relationship before engaging in a romantic or sexual relationship with the patient and/or where the licensee used or exploited the trust, knowledge, emotions or influence derived from the prior professional relationship. The Board will consider the physician-patient relationship terminated if the physician has not evaluated or treated the patient for a period of at least two (2) years.

(9) Failing to comply with the provisions of O.C.G.A. Section 31-9- 6.1 and Chapter 360-14 of the Rules of Composite State Board of Medical Examiners relating to informed consent, which requires that certain information be disclosed and that consent be obtained regarding any surgical procedure performed under general anesthesia, spinal anesthesia, or major regional anesthesia or an amniocentesis procedure or a diagnostic procedure that involves the intravenous injection of a contrast material.

(10) Failing to conform to the recommendation of the Centers for Disease Control for preventing transmission of the Human Immunodeficiency Virus, Hepatitis B Virus, Hepatitis C Virus, and Tuberculosis to patients during exposure-prone invasive procedures. It is the responsibility of all persons currently licensed by the Board to maintain familiarity with these recommendations, which the Board considers the minimum standards of acceptable and prevailing medical practice.

(11) Failing to timely respond to an investigative subpoena issued by the Board.

(12) Conducting a physical examination of the breast and/or genitalia of a patient of the opposite sex without a chaperone present.

(13) Practicing medicine while mentally, physically, or chemically impaired.

(14) Failing to use such means as history, physical examination, laboratory, or radiographic studies, when applicable, to diagnose a medical problem.

(15) Failing to use medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation, or addiction in the treatment of patients. However, nothing herein shall be interpreted to prohibit investigations conducted under protocols approved by a state medical institution permitted by DHR and with human subject review under the

guidelines of the United States Department of Health and Human Services.

(16) Failing to maintain patient records documenting the course of the patient's medical evaluation, treatment, and response.

(a) A physician shall be required to maintain a patient's complete medical record, which may include, but is not limited to, the following: history and physical, progress notes, X-ray reports, photographs, laboratory reports, and other reports as may be required by provision of the law. A physician shall be required to maintain a patient's complete treatment records for a period of no less than 10 years from the patient's last office visit.

(b) The requirements of this rule shall not apply to a physician who has retired from or sold his or her medical practice if:

1. such physician has notified his or her patients of retirement from or sale of practice by mail, at the last known address of his or her patients, offering to provide the patient's records or copies thereof to another provider of the patient's choice and, if the patient so requests, to the patient;

2. has caused to be published, in the newspaper of greatest circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area, a notice which shall contain the date of such retirement or sale that offers to provide the patient's records or copies thereof to another provider of the patient's choice, and if the patient so requests, to the patient; and

3. has placed in a conspicuous location in or on the façade of the physician's office, a sign announcing said retirement or sale of the practice. The sign shall be placed 30 days prior to retirement or the sale of the practice and shall remain until the date of retirement or sale.

4. Both the notice and sign required by rule 360-3-.02(16)(c) shall advise the physician's patients of their opportunity to transfer or receive their records.

(c) The period specified in this rule may be less than the length of time necessary for a physician to protect himself or herself against other adverse actions. Therefore, physicians may wish to seek advice from private counsel or their malpractice insurance carrier.

(17) Failing to attempt to inform a patient of the receipt of laboratory test results within 14 days of the physician receiving those results, unless the standard of care requires a more immediate notification. Dates that laboratory test results are received and attempts to contact patients shall be documented in the patient record.

(18) Any other practice determined to be below the minimal standards of acceptable and prevailing practice.

(19) To provide a false, deceptive or misleading statement(s) as a medical expert.<sup>1</sup>

(20) Failing to report to the Board within 30 days of becoming unable to practice medicine with reasonable skill and safety by result of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(21) Being employed by a physician's assistant whom the physician supervises.

Authority O.C.G.A. Secs. 16-13-41, 16-13-74, 31-9-6.1, 31-33-2, 43-1-19, 43-1-25, 43-34-24(c), 43-34-24.1, 43-34-37, 43-34-102, 43-34-103, 43-34-108.

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<sup>1</sup> A notice of Intent to Amend and Adopt paragraph (20) has been issued and will be considered by the Board on May 6, 2005, immediately following the hearing scheduled for 9:10 a.m.

# COMPOSITE STATE BOARD OF MEDICAL EXAMINERS



EXECUTIVE DIRECTOR  
LaSharn Hughes

MEDICAL DIRECTOR  
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## COMPOSITE STATE BOARD OF MEDICAL EXAMINERS

### NOTICE OF INTENT TO ADOPT RULES

#### TO ALL INTERESTED PARTIES:

Notice is hereby given by the Composite State Board of Medical Examiners that it intends to amend Chapter 360-3, entitled "Investigations and Discipline," by adopting a new paragraph (20) of rule 360-3-.02, entitled "Unprofessional Conduct Defined. Amended." An exact copy of the proposed amendment is attached to this Notice.

This notice, together with an exact copy of the proposed rule and a synopsis of the proposed rule are being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice, an exact copy of the proposed rule and a synopsis of the proposed rule may be reviewed during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except official State holidays, at the office of the Composite State Board of Medical Examiners, 2 Peachtree Street, N.W., 36<sup>th</sup> Floor, Atlanta, Georgia 30303.

Any interested person who will be affected by these rules may present his or her comments to the Board no later than April 21, 2005 or make comments at the public hearing. Comments may be directed to Diane Atkinson, Composite State Board of Medical Examiners, 2 Peachtree Street, NW, 36<sup>th</sup> floor, Atlanta, Georgia 30303 or may be received by the Board by e-mail at [matkinson@dch.state.ga.us](mailto:matkinson@dch.state.ga.us).

A public hearing is scheduled to begin at 9:10 a.m., or immediately following the conclusion of the 9:05 a.m. hearing regarding amendments to rule 360-2-.02, whichever occurs later, on Friday, May 6, 2005 at the 40<sup>th</sup> floor Board Room, 2 Peachtree Street, N.W., Atlanta, Georgia 30303, to provide the public an opportunity to comment upon and provide input into the proposed rules.

The Board voted to adopt this Notice of Intent on November 12, 2004 and intends to adopt the attached rules at its meeting on May 6, 2005, after the conclusion of the public hearing, at the 40<sup>th</sup> floor Board Room, No. 2 Peachtree Street, NW, Atlanta, GA 30303.

The authority for promulgation of these rules is O. C. G. A. §§ 43-34-24(c), 43-1-25, 43-34-37(a) (13), 43-1-19(10) and the specific statutes cited in the proposed rules. This Notice is adopted and posted in compliance with O.C. G.A. § 50-13-4 of the Georgia Administrative Procedures Act. A synopsis of the proposed rules and an economic impact statement are attached to this Notice.

Date: 3/18/05

Signed: LaSharn Hughes

LaSharn Hughes

Executive Director

Composite State Board of Medical Examiners

*Administratively Attached to Community Health  
An Equal Opportunity Employer*

ECONOMIC IMPACT AND SYNOPSIS FOR  
AMENDMENT TO CHAPTER 360-3  
INVESTIGATIONS AND DISCIPLINE

ECONOMIC IMPACT:

The attached rules are promulgated under the authority of the Medical Practice Act, Title 43, Chapter 34. The Composite State Board of Medical Examiners licenses and regulates six professions, including physicians. There are no additional fees associated with this rule. Therefore, the formulation and adoption of this rule as considered by the Board on does not impose excessive regulatory cost on any licensee. Additionally, it is not legal or feasible to meet the objectives of the Medical Practice Act to adopt or implement differing actions for businesses as listed at O.C.G.A. § 50-13-4(a)(3)(A), (B), (C) and (D).

RULE SYNOPSIS:

A new paragraph (20) to rule 360-3-.02, entitled "Unprofessional Conduct Defined. Amended:" is hereby proposed for adoption.

Purpose: The purpose of proposed amendment 360-3-.02(20) is to require physicians who become unable to practice with reasonable skill and safety to report to the Board.

Main Features: Proposed paragraph (20) to rule 360-3-.02 provides that it is unprofessional conduct and the Board is therefore authorized to take disciplinary action if a physician licensed to practice medicine in this State fails to report to the Board within 30 days of becoming unable to practice medicine with reasonable skill and safety.

The differences between the existing rule and the proposed amendments to the rule are shown below: (The lined-through text is proposed to be deleted and underlined text is proposed to be added.)

Investigations and Discipline

Chapter 360-3

RULES  
OF  
COMPOSITE STATE BOARD OF MEDICAL EXAMINERS  
  
CHAPTER 360-3  
INVESTIGATIONS AND DISCIPLINE

360-3-.02 Unprofessional Conduct Defined. Amended.

**360-3-.02 Unprofessional Conduct Defined. Amended.**

O.C.G.A. §§ 43-1-19 and 43-34-37 authorize the Board to take disciplinary action against licensees for unprofessional conduct. "Unprofessional conduct" shall include, but not be limited to, the following:

- (1) Prescribing controlled substances for a known or suspected habitual drug abuser or other substance abuser in the absence of substantial justification.
- (2) Writing prescriptions for controlled substances for personal use or, except for documented emergencies, for immediate family members. For purposes of this rule, "immediate family members" include spouses, children, siblings, and parents.
- (3) Prescribing, ordering, dispensing, administering, selling or giving any amphetamine, sympathomimetic amine drug or compound designated as a Schedule II Controlled Substance under O.C.G.A. T. 16, Ch. 13, to or for any person except in the following situations:
  - (a) Treatment of any of the following conditions:
    1. Attention deficit disorder;
    2. Drug induced brain dysfunction;
    3. Narcolepsy;
    4. Epilepsy or;
    5. Depression or other psychiatric diagnosis.
  - (b) For clinical investigations conducted (1) under protocols approved by a state medical institution permitted by the Georgia Department of Human Resources ("DHR") and (2) with human subject review under the guidelines of the United States Department of Health and Human Services.
- (4) Pre-signing prescriptions that have the patient's name, type of medication, or quantity blank.
- (5) Prescribing controlled substances (O.C.G.A. T. 16, Ch. 13, Art. 2) and/or dangerous drugs (O.C.G.A. T. 16, Ch. 13, Art. 3) for a patient based solely on a consultation via electronic means with the patient, patient's guardian or patient's agent. This shall not prohibit a licensee who is on-call or covering for another licensee from prescribing up to a 72-hour supply of medications for a patient of such other licensee nor shall it prohibit a licensee from prescribing medications when documented emergency circumstances exist.
- (6) Providing treatment and/or consultation recommendations via electronic or other means unless the licensee has performed a history and physical examination of the patient

adequate to establish differential diagnoses and identify underlying conditions and/or contra- indications to the treatment recommended. This shall not prohibit a licensee who is on call or covering for another licensee from treating and/or consulting a patient of such other licensee.

(7) Failing to maintain appropriate patient records whenever Schedule II, III, IV or V controlled substances are prescribed. Appropriate records, at a minimum, shall contain the following:

(a) The patient's name and address;

(b) The date, drug name, drug quantity, and patient's diagnosis necessitating the Schedule II, III, IV, or V controlled substances prescription; and

(c) Records concerning the patient's history.

(8) Committing any act of sexual intimacy, abuse, misconduct, or exploitation of any individual related to the physician's practice of medicine regardless of consent. The rule shall apply to former patients where the licensee did not terminate in writing the physician-patient relationship before engaging in a romantic or sexual relationship with the patient and/or where the licensee used or exploited the trust, knowledge, emotions or influence derived from the prior professional relationship. The Board will consider the physician-patient relationship terminated if the physician has not evaluated or treated the patient for a period of at least two (2) years.

(9) Failing to comply with the provisions of O.C.G.A. Section 31-9- 6.1 and Chapter 360-14 of the Rules of Composite State Board of Medical Examiners relating to informed consent, which requires that certain information be disclosed and that consent be obtained regarding any surgical procedure performed under general anesthesia, spinal anesthesia, or major regional anesthesia or an amniocentesis procedure or a diagnostic procedure that involves the intravenous injection of a contrast material.

(10) Failing to conform to the recommendation of the Centers for Disease Control for preventing transmission of the Human Immunodeficiency Virus, Hepatitis B Virus, Hepatitis C Virus, and Tuberculosis to patients during exposure-prone invasive procedures. It is the responsibility of all persons currently licensed by the Board to maintain familiarity with these recommendations, which the Board considers the minimum standards of acceptable and prevailing medical practice.

(11) Failing to timely respond to an investigative subpoena issued by the Board.

(12) Conducting a physical examination of the breast and/or genitalia of a patient of the opposite sex without a chaperone present.

(13) Practicing medicine while mentally, physically, or chemically impaired.

(14) Failing to use such means as history, physical examination, laboratory, or radiographic studies, when applicable, to diagnose a medical problem.

(15) Failing to use medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation, or addiction in the treatment of patients. However, nothing herein shall be interpreted to prohibit investigations conducted under protocols approved by a state medical institution permitted by DHR and with human subject review under the guidelines of the United States Department of Health and Human Services.

(16) Failing to maintain patient records documenting the course of the patient's medical evaluation, treatment, and response.

(a) A physician shall be required to maintain a patient's complete medical record, which may include, but is not limited to, the following: history and physical, progress notes, X-ray reports, photographs, laboratory reports, and other reports as may be required by provision of the law. A physician shall be required to maintain a patient's complete treatment records for a period of no less than 10 years from the patient's last office visit.

(b) The requirements of this rule shall not apply to a physician who has retired from or sold his or her medical practice if:

1. such physician has notified his or her patients of retirement from or sale of practice by mail, at the last known address of his or her patients, offering to provide the patient's records or copies thereof to another provider of the patient's choice and, if the patient so requests, to the patient;

2. has caused to be published, in the newspaper of greatest circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area, a notice which shall contain the date of such retirement or sale that offers to provide the patient's records or copies thereof to another provider of the patient's choice, and if the patient so requests, to the patient; and

3. has placed in a conspicuous location in or on the façade of the physician's office, a sign announcing said retirement or sale of the practice. The sign shall be placed 30 days prior to retirement or the sale of the practice and shall remain until the date of retirement or sale.

4. Both the notice and sign required by rule 360-3-.02(16)(c) shall advise the physician's patients of their opportunity to transfer or receive their records.

(c) The period specified in this rule may be less than the length of time necessary for a physician to protect himself or herself against other adverse actions. Therefore, physicians may wish to seek advice from private counsel or their malpractice insurance carrier.

(17) Failing to attempt to inform a patient of the receipt of laboratory test results within 14 days of the physician receiving those results, unless the standard of care requires a more immediate notification. Dates that laboratory test results are received and attempts to contact patients shall be documented in the patient record.

(18) Any other practice determined to be below the minimal standards of acceptable and prevailing practice.

(19) To provide a false, deceptive or misleading statement(s) as a medical expert.<sup>1</sup>

(20) Failing to report to the Board within 30 days of becoming unable to practice medicine with reasonable skill and safety by result of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

Authority O.C.G.A. Secs. 16-13-41, 16-13-74, 31-9-6.1, 31-33-2, 43-1-19, 43-1-25, 43-34-24(c), 43-34-24.1, 43-34-37.

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<sup>1</sup> The Board adopted rule 360-3-.02(19) on December 3, 2004 and filed it with the Secretary of State on December 10, 2004.